

Assembly Bill No. 1877

Passed the Assembly August 25, 2014

Chief Clerk of the Assembly

Passed the Senate August 21, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Title 22.1 (commencing with Section 100600) to the Government Code, relating to health care coverage, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1877, Cooley. California Vision Care Access Council.

Existing law, the federal Patient Protection and Affordable Care Act, requires each state to establish an American Health Benefits Exchange to facilitate the purchase of qualified health plans by qualified individuals and small employers. PPACA prohibits an Exchange from making available any health plan other than a qualified health plan, except for certain stand-alone dental plans. Existing state law establishes the California Health Benefit Exchange within state government, specifies the powers and duties of the board governing the Exchange, and requires the board to facilitate the purchase of qualified health plans through the Exchange by qualified individuals and small employers by January 1, 2014.

This bill would establish the California Vision Care Access Council within state government and would require that the Council be governed by the executive board that governs the California Health Benefit Exchange. The bill would require the Council to establish an interagency agreement with the California Health Benefit Exchange allowing the Council to utilize the executive, administrative, and other related resources of the Exchange and would prohibit the use of specified Exchange funds for purposes of the Council. The bill would require the Council to construct, manage, and maintain an Internet Web site to inform consumers about individual and employer-based vision plans offered by participating carriers. The bill would require the Council to work with the Exchange to establish a direct link between that Internet Web site and the Internet Web site of the Exchange. The bill would require the Council to refer consumer questions regarding health care eligibility and enrollment options to the Exchange and to licensed insurance agents, as specified.

This bill would impose specified requirements on participating carriers and would also require the Council to establish other requirements for carrier participation and the standards and criteria for participating vision plans that are in the best interests of individuals and employers eligible to purchase coverage through the Exchange. The bill would require participating vision plans to be issued on a guarantee issue basis without preexisting condition provisions and would require a participating carrier to make available to consumers an electronic directory of contracting vision care providers. The bill would also enact other related provisions.

This bill would create the California Vision Care Access Trust Fund, the moneys of which would be available to the board for purposes of the bill's provisions upon appropriation by the Legislature, would authorize the Council to assess a charge on participating vision plans that is reasonable and necessary to support the development, operations, and prudent cash management of the Council, and would make the implementation of the bill's provisions contingent on a determination by the board that sufficient moneys exist in the fund to implement the bill's provisions. The bill would prohibit General Fund moneys from being used for any of these purposes and would require that any costs associated with the implementation of these provisions be paid from the California Vision Care Access Trust Fund.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the California Vision Care Access Act.

SEC. 2. It is the intent of the Legislature to make the statutory changes to California law necessary to establish a Vision Care Access Council in California in a manner that is consistent with the rules, regulations, and guidance implementing the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), hereafter the federal act. In doing so, it is the intent of the Legislature to do both of the following:

(a) Provide Californians an organized, transparent Internet Web site to provide information about affordable, quality vision care coverage, augmenting and supplementing the essential health benefits available through the California Health Benefit Exchange.

(b) Meet the requirements of the federal act and all applicable federal guidance, rules, and regulations.

SEC. 3. Title 22.1 (commencing with Section 100600) is added to the Government Code, to read:

TITLE 22.1. CALIFORNIA VISION CARE ACCESS
COUNCIL

100600. For purposes of this title, the following definitions shall apply:

(a) “Board” means the board described in subdivision (a) of Section 100601.

(b) “Carrier” means either a private health insurer holding a valid outstanding certificate of authority from the Insurance Commissioner or a health care service plan, as defined under subdivision (f) of Section 1345 of the Health and Safety Code, licensed by the Department of Managed Health Care.

(c) “Council” means the Vision Care Access Council created by Section 100601.

(d) “Exchange” means the California Health Benefit Exchange established by Section 100500.

(e) “Federal act” means the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and any amendments to, or regulations or guidance issued under, those acts.

(f) “Fund” means the California Vision Care Access Trust Fund established by Section 100620.

(g) “Licensed agent” means an individual licensed by the Department of Insurance pursuant to Section 1626 of the Insurance Code.

(h) “Preexisting condition provision” means a policy provision that excludes coverage for charges or expenses incurred during a specified period following the insured’s effective date of coverage, as to a condition for which medical advice, diagnosis, care, or treatment relating to vision was recommended or received during

a specified period immediately preceding the effective date of coverage.

(i) “Qualified individual” means an individual who is eligible to purchase coverage through the Exchange.

(j) “Qualified employer” means an employer that is eligible to purchase coverage through the Exchange.

(k) “Vision plan” means a specialized health care service plan contract, as defined in Section 1345 of the Health and Safety Code, covering vision care services or a specialized health insurance policy, as defined in Section 106 of the Insurance Code, covering vision care services.

100601. (a) There is in the state government the California Vision Care Access Council, an independent public entity not affiliated with an agency or department, which shall be known as the Council. The Council shall be governed by the executive board established pursuant to Section 100500. The board shall be subject to Section 100500.

(b) (1) To the extent permitted by the federal act, the Council shall establish an interagency agreement with the Exchange allowing the Council to utilize the executive, administrative, and other related resources of the Exchange, including, but not limited to, the staff employed by the Exchange and the programming and information technology infrastructure supporting the Exchange.

(2) In addition to establishing an interagency agreement under paragraph (1), the Council may establish interagency agreements with other agencies for the purposes of contracting for executive, administrative, and other related services, if necessary.

(c) Each member of the board shall have the responsibility and duty to meet the requirements of this title, the federal act, and all applicable state and federal laws and regulations, to serve the public interest of the individuals and small businesses seeking health care coverage through the Council, and to ensure the operational well-being and fiscal solvency of the Council.

(d) There shall not be any liability in a private capacity on the part of the board or any member of the board, or any officer or employee of the board, for or on account of any act performed or obligation entered into in an official capacity, when done in good faith, without the intent to defraud, and in connection with the administration, management, or conduct of this title or affairs related to this title.

(e) A member of the board or staff of the Council shall not be employed by, a consultant to, a member of the board of directors of, affiliated with, or otherwise a representative of, an optical company that manufactures, sells, or distributes lenses, frames, or other vision care appliances.

100603. The Council shall, at a minimum, do all of the following:

(a) Construct, manage, and maintain an Internet Web site, separate from the Internet Web site established by the Exchange, to inform consumers about participating individual and employer-based vision plans that are available to qualified individuals and qualified employers. The Internet Web site shall offer full and complete carrier information to consumers and shall allow enrollees and prospective enrollees to obtain standardized comparative information on the participating vision plans.

(b) Work cooperatively with the Exchange to establish a direct link from the Internet Web site maintained by the Exchange to the Internet Web site described in subdivision (a).

(c) Determine the minimum requirements a carrier shall meet to be considered for participation in the Internet Web site described in subdivision (a), and the standards and criteria for participating vision plans that are in the best interests of qualified individuals and qualified employers. The board shall consistently and uniformly apply these requirements, standards, and criteria to all carriers. The requirements adopted pursuant to this subdivision shall, at a minimum, include the following:

(1) A requirement that a carrier meet a minimum net asset threshold as determined by the Council to ensure that it is both well established and can demonstrate that it offers a proven model for providing vision care coverage in California. The Council may also consider the usefulness of setting a minimum annual premium revenue as evidence of the soundness of the carrier.

(2) A requirement that a carrier have, and continuously maintain, an established Internet Web site.

(3) A requirement that a carrier demonstrate to the Council adequate vision care coverage networks sufficient to ensure convenient geographic access to vision care in California.

(4) A requirement that a carrier demonstrate to the Council adequate, multilingual consumer service and benefit delivery capabilities.

(5) Any other requirements determined necessary by the board based on input from health care consumer advocacy organizations, representatives of the optometry and ophthalmology industries, health insurers, health care service plans, and licensed agents.

(d) Require participating vision plans to do both of the following:

(1) (A) Make available to the public, and the Insurance Commissioner or the Department of Managed Health Care, as applicable, accurate and timely disclosure of the following information:

- (i) Claims payment policies and practices.
- (ii) Periodic financial disclosures.
- (iii) Data on enrollment.
- (iv) Data on disenrollment.
- (v) Data on the number of claims that are denied.
- (vi) Information on cost sharing and payments with respect to any out-of-network coverage.

(B) The information required under subparagraph (A) shall be provided in plain language.

(2) Permit individuals to learn, in a timely manner upon the request of the individual, the amount of cost sharing, including, but not limited to, deductibles, copayments, and coinsurance, under the individual's plan or coverage that the individual would be responsible for paying with respect to the furnishing of a specific item or service by a participating provider. At a minimum, this information shall be made available to the individual through an Internet Web site, through licensed agents, and through other means for individuals without access to the Internet.

(e) Distribute fair and impartial information concerning enrollment in participating vision plans.

(f) Provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman, or any other appropriate state agency or agencies, for any enrollee with a grievance, complaint, or question regarding a participating carrier, coverage purchased pursuant to this title, or a determination by the carrier or under that coverage.

(g) Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Council using the services of licensed agents.

(h) Employ necessary staff to the extent not provided pursuant to the interagency agreements established under Section 100601.

(i) Assess a charge on the participating vision plans that is reasonable and necessary to support the development, operations, and prudent cash management of the Council.

(j) Authorize expenditures, as necessary, from the fund to pay program expenses to administer the Council.

(k) Keep an accurate accounting of all activities, receipts, and expenditures, and annually publish a report concerning that accounting.

(l) (1) Annually publish a report on the implementation and performance of the Council functions during the preceding fiscal year, that shall be made available to the public on the Internet Web site of the Council.

(2) In addition to the report described in paragraph (1), the Council shall be responsive to requests for additional information from the Legislature, including providing testimony and commenting on proposed state legislation or policy issues.

(m) Exercise all powers reasonably necessary to carry out and comply with the duties, responsibilities, and requirements of this title.

(n) Consult with stakeholders relevant to carrying out the activities under this title, including, but not limited to, all of the following:

(1) Health care consumers who are enrolled in vision plans.

(2) Individuals and entities with experience in facilitating enrollment in vision plans.

(3) Representatives of small businesses and self-employed individuals.

(4) Licensed agents.

(o) Require participating carriers to regularly, as determined by the Council, provide the Council with enrollment or disenrollment data.

(p) Ensure that written information made available by the Council is presented in a plainly worded, easily understandable format and made available in California's prevalent languages.

(q) Provide a choice of carrier in each region of the state.

(r) Require, as a condition of participation in the Council, a vision plan to do the following:

(1) Not impose any preexisting condition provision upon any enrollee.

(2) With respect to an individual vision plan, be offered, marketed, and sold to all individuals and dependents in each service area in which the carrier provides or arranges for vision care services.

(3) With respect to an employer-based vision plan, be offered, marketed, and sold to all employers and eligible employees and dependents in the applicable group market in each service area in which the carrier provides or arranges for vision care services.

(s) Share information with relevant state departments, consistent with the confidentiality provisions in Section 1411 of the federal act, necessary for the administration of the Council.

(t) Collect only that information from individuals or designees of individuals as is necessary to administer the Council and consistent with the federal act.

100605. The Council may do any of the following:

(a) Enter into contracts.

(b) Adopt an official seal.

(c) Sue and be sued.

(d) Receive and accept gifts, grants, or donations of moneys from any agency of the United States, any agency of the state, any municipality, county, or other political subdivision of the state.

(e) Receive and accept gifts, grants, or donations from individuals, associations, private foundations, or corporations, in compliance with the conflict-of-interest provisions to be adopted by the board at a public meeting.

(f) Adopt rules and regulations as necessary.

100606. (a) A participating carrier shall utilize a standardized format for presenting vision plan options to the Council.

(b) The Council shall refer questions from consumers regarding eligibility and enrollment options for Medi-Cal or through the Exchange to the Exchange and to licensed agents.

(c) The Council shall require a participating carrier to make available to consumers and regularly update an electronic directory of contracting vision care providers in the carrier's network.

100607. (a) Notwithstanding any other law, the Council shall not be subject to licensure or regulation by the Department of Insurance or the Department of Managed Health Care.

(b) Participating carriers shall have and maintain a license or certificate of authority from, and shall be in good standing with, their respective regulatory agencies.

(c) Nothing in this title shall be construed to require a qualified health plan offered through the Exchange to contract with the Council in order to offer coverage for adult vision through the Exchange.

100609. Records of the Council that reveal any of the following shall be exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1):

(a) The deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the Council, entities with which the Council is considering a contract, or entities with which the Council is considering or enters into any other arrangement under which the Council provides, receives, or arranges services or reimbursement.

(b) The impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

100620. (a) The California Vision Care Access Trust Fund is hereby created in the State Treasury for the purpose of this title. Moneys collected pursuant to this title shall be deposited in the fund and, upon appropriation by the Legislature, shall be available to the board for purposes of this title. Any moneys in the fund that are unexpended or unencumbered at the end of a fiscal year may be carried forward to the next succeeding fiscal year.

(b) Notwithstanding any other law, moneys deposited in the fund shall not be loaned to, or borrowed by, any other special fund or the General Fund, or a county general fund or any other county fund.

(c) The Council shall establish and maintain a prudent reserve in the fund.

(d) The board or staff of the Council shall not utilize any funds intended for the administrative and operational expenses of the Council for staff retreats, promotional giveaways, excessive executive compensation, or promotion of federal or state legislative or regulatory modifications.

(e) Notwithstanding Section 16305.7, all interest earned on the moneys that have been deposited into the fund shall be retained in the fund and used for purposes consistent with the fund.

(f) (1) State General Fund moneys shall not be used for any purpose under this title.

(2) Federal money paid to the state for the purpose of establishing an American Health Benefit Exchange, as described in Section 1311 of the federal act, and charges assessed by the Exchange pursuant to subdivision (n) of Section 100503 of the Government Code, shall not be used for purposes of this title.

(3) Any costs associated with the implementation of this title, including, but not limited to, the proportionate cost of Exchange resources used for purposes of this title, shall be paid from the fund.

100621. (a) The implementation of the provisions of this title, other than this section and Sections 100601, 100605, and 100620, shall be contingent on a determination by the board that sufficient moneys exist in the fund to implement this title.

(b) The board shall provide notice to the Joint Legislative Budget Committee and the Director of Finance when the financial threshold set forth in subdivision (a) has been reached.

SEC. 4. The Legislature finds and declares that Section 3 of this act, which adds Section 100609 to the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to ensure that the California Vision Care Access Council is not constrained in exercising its fiduciary powers and obligations to provide consumers with the most accessible and affordable information regarding vision care benefits that augment the benefits available through the California Health Benefit Exchange, the limitations on the public's right of access imposed by Section 3 of this act are necessary.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide Californians an organized, transparent Internet Web site to inform consumers about affordable, quality vision care coverage, augmenting and supplementing the essential health benefits available through the California Health Benefit Exchange in a manner consistent with evolving federal rules, regulations, and official guidance implementing the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), it is necessary that this act take effect immediately.

Approved _____, 2014

Governor